

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>CAROLYN HERZ SRIVASTAVA,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 3:10-0082</b>
	)	
<b>v.</b>	)	<b>JUDGE HAYNES</b>
	)	
<b>BLAKEFORD AT GREEN HILLS</b>	)	
<b>CORPORATION, VAN CLUCK, PATRICIA</b>	)	
<b>MORELL, ARNOLD BIENSTOCK, ERIC</b>	)	<b>JURY TRIAL DEMANDED</b>
<b>BRAM, JONATHAN ADLAND, ORA HIRSCH</b>	)	
<b>PESCOVITZ, and DAVID F. HAMILTON,</b>	)	
<b>Defendants.</b>	)	

**DAVID F. HAMILTON’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

This lawsuit is the latest in an ongoing series of frivolous and harassing attacks by Carolyn Srivastava on the judiciary, the judicial system, and people she claims have wronged her. State, federal district, and federal appellate courts in Indiana where she lives have been forced to address her abuse of the judicial system through filing restrictions.

Defendant David F. Hamilton was the federal district court judge assigned several of Ms. Srivastava’s prior lawsuits in the Southern District of Indiana. He is now a judge of the U.S. Seventh Circuit Court of Appeals. As such, because all his acts about which Ms. Srivastava complains were judicial acts within his jurisdiction, Judge Hamilton has absolute judicial immunity from suit. Even if Judge Hamilton were not immune from suit, Ms. Srivastava has failed to state a civil RICO claim against Judge Hamilton, her RICO claim is barred by the statute of limitations, and venue in this Court is improper for her RICO claim.

Additionally, the Westfall Act precludes suit against Judge Hamilton on Ms. Srivastava's claims for the state law torts of intentional infliction of emotional distress and fraud. Ms. Srivastava's sole remedy on those claims is a suit against the United States under the Federal Tort Claims Act ("FTCA") (under which she must first exhaust her administrative remedies, and for which venue properly lies in Indiana). And, Ms. Srivastava is not entitled to punitive damages, injunctive relief or a jury trial under the FTCA.

Ms. Srivastava's complaint suffers from several other defects, including her legal inability and lack of standing to obtain injunctive relief against Judge Hamilton. Finally, her complaint also is subject to being stricken as impertinent and scandalous.

Therefore, Judge Hamilton respectfully requests that the Court grant his motion in all respects and dismiss plaintiff's complaint with prejudice.

Judge Hamilton relies on this Motion, the Memorandum of Points and Authorities, and exhibits filed herewith in support of his Motion.

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Judge Hamilton also is filing with his Motion: (1) a Motion to substitute the United States as the proper defendant in Ms. Srivastava's tort claims; and (2) a Certification that Judge Hamilton was acting within the scope of his employment as an employee of the United States at the time of the incidents alleged in the plaintiff's complaint.

Respectfully submitted,

EDWARD M. YARBROUGH  
UNITED STATES ATTORNEY  
MIDDLE DISTRICT OF TENNESSEE

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing pleading has been served, by electronic means, via the U.S. District Court's system, if registered, otherwise by First Class Mail postage prepaid, this 9<sup>th</sup> day of April 2010, on:

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